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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ALASKA CARPENTERS HEALTH AND
WELFARE FUND, ALASKA
CARPENTERS DEFINED
CONTRIBUTION TRUST, SOUTHERN
ALASKA CARPENTERS DEFINED
BENEFIT TRUST, and SOUTHERN
ALASKA CARPENTERS
APPRENTICESHIP AND TRAINING
TRUST,

Plaintiffs,

vs.

HCC, LLC and HANDLE
CONSTRUCTION COMPANY, INC.

Defendants.

Case No.

**COMPLAINT FOR DELINQUENT FRINGE BENEFIT
CONTRIBUTIONS AND FOR DECLARATORY RELIEF**

For their complaint, plaintiffs allege as follows:

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I. PARTIES AND JURISDICTION

1. Plaintiffs are the Alaska Carpenters Health and Welfare Fund, Alaska Carpenters Defined Contribution Trust, Southern Alaska Carpenters Defined Benefit Trust, and Southern Alaska Carpenters Apprenticeship and Training Trust.

2. Plaintiffs are joint labor-management funds created pursuant to Section 302(c) of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c), and the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.* as amended (“ERISA”).

3. Defendant HHC, LLC (“HCC”) is an Alaska State corporation engaged in the business of general construction with its principal offices located at 337 E 4th Ave., Unit No. 1, Anchorage, AK 99501-2665.

4. Defendant Handle Construction Company (“Handle”) is an Alaska State corporation engaged in the business of general construction with its principal offices located at 337 E 4th Ave., Unit No. 1, Anchorage, AK 99501-2665.

5. Jurisdiction is conferred on this court by Section 301 of the LMRA, 29 U.S.C. § 186, and Sections 502(g)(2) and 515 of ERISA, 29 U.S.C. §§ 1132(g)(2) and 1145.

6. Venue lies in the United States District Court for the District of Alaska under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

II. FIRST CAUSE OF ACTION: HCC DELINQUENT CONTRIBUTIONS

7. At all material times, HCC has been party to a collective bargaining agreement (“CBA”) which obligates HCC to make benefit contributions to plaintiffs on behalf of its employees covered by the CBA.

8. For the period from March 2011 through the present, HCC has failed to make

1 timely contributions to plaintiffs in an amount to be proven at trial.

2 9. Under the plaintiffs' Trust Agreements, under the CBA and under ERISA, HCC
3 is obligated to pay liquidated damages, interest, reasonable attorney fees, and costs and
4 expenses of suit.

5 **III. SECOND CLAIM FOR RELIEF: HCC AND HANDLE ALTER EGO**

6 10. Plaintiffs reallege the allegations contained in paragraphs 1 through 9 of this
7 complaint as though fully set forth herein.

8 11. At all material times Handle has been 100% owned by Marc Marlow.

9 12. At all material times, Handle has been party to a collective bargaining
10 agreement which obligates Handle to make benefit contributions to plaintiffs on behalf of its
11 employees covered by the collective bargaining agreement.

12 13. For the period from July 2009 through the present, Handle failed to make timely
13 contributions to plaintiffs.

14 14. On or about December 10, 2010, plaintiffs filed suit against Handle in this Court
15 in *Alaska Carpenters Health and Welfare Fund, et al. v. Handle Construction Company, et al.*,
16 Case No. 3:10-cv-00270-HRH ("Handle Litigation").

17 15. In April 2011, pursuant to a settlement agreement, Handle executed a
18 Confession of Judgment in the total amount of \$221,540.02, which represents delinquent
19 contributions, interest, attorney fees and liquidated damages owed to plaintiffs for the period
20 from July 2010 through February 2011.

21 16. On September 20, 2011, this Court entered the Confession of Judgment in the
22 Handle Litigation.

1 17. On or about June 10, 2010, defendant HCC was formed as an Alaska limited
2 liability company to perform construction as a general contractor. HCC was owned entirely by
3 Robert Hartley, the father-in-law to Marc Marlow. When formed, Marc Marlow was
4 designated as the registered agent of HCC.

5 18. Prior to March 2011, HCC did not engage in any significant business as a
6 general contractor.

7 19. On or about March 23, 2011, Robert Hartley, on behalf of HCC, signed the
8 CBA with the Alaska Regional Council of Carpenters.

9 20. HCC's purpose in signing the collective bargaining agreement was to continue
10 to make contributions on behalf of Handle's employees who were covered under its collective
11 bargaining agreement without the contributions being credited to Handle's delinquencies.

12 21. On or about March 30, 2011, ownership of HCC was transferred from Robert
13 Hartley to Elizabeth Marlow, Marc Marlow's daughter. About this same time, HCC's
14 registered agent changed from Marc Marlow to Elliot Marlow, Marc Marlow's son.

15 22. On or about March 30, 2011, Handle ceased all or the majority of its operations.

16 23. Since March 30, 2011, HCC has continued to operate a general contracting
17 business at the same location where Handle conducted its business operations. HCC continues
18 to use the same facilities, equipment, and substantially the same management, supervisory
19 personnel and employees as Handle.

20 24. In view of the interrelationship of operations, common management and
21 ownership, and centralized control of labor relations, common location, equipment and
22 employees between Handle and HCC, Handle and HCC are alter egos and are therefore jointly
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1 and severally liable to plaintiffs as alter-ego employers for all contributions, liquidated
2 damages, interest, costs, and attorney's fees otherwise due from each of them under the
3 collective bargaining agreement and in accordance with the confession of judgment entered
4 against Handle and any monetary judgment entered herein.

5 25. Handle and HCC are also jointly and severally liable to the plaintiff trust funds
6 for all contributions, liquidated damages, interest, costs, and attorney's fees based on the hours
7 worked by their employees for the period of July 2009 through the date of judgment herein, in
8 an amount to be proved on motions or at trial.

10 **IV. THIRD CLAIM FOR RELIEF: HCC SUCCESSORSHIP LIABILITY**

11 26. Plaintiffs reallege the allegations contained in paragraphs 1 through 25 of this
12 complaint as though fully set forth herein.

13 27. In view of the interrelationship of operations, common management and
14 ownership, and centralized control of labor relations, common location, equipment and
15 employees by HCC, HCC is the successor employer with respect to Handle and its obligations
16 under the collective bargaining agreement.

17 28. Defendants are therefore jointly and severally liable to the plaintiffs as the
18 successor employer to Handle for all contributions, liquidated damages, interest, costs, and
19 attorney's fees otherwise due from Handle under the collective bargaining agreement and in
20 accordance with the confession of judgment entered against Handle.

22 **V. RELIEF REQUESTED**

23 29. WHEREFORE, based on the foregoing allegations set forth in paragraphs 1
24 through 28 above, plaintiffs pray for the following relief:
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- a. A money judgment against HCC for the full amount of contributions, liquidated damages, interest, and reasonable attorney fees, and costs and expenses of suit found to be owing to plaintiffs from March 1, 2011 to the date of the judgment herein;
- b. A declaratory judgment finding HCC and Handle to be alter egos, and therefore, jointly and severally liable to plaintiffs as alter-ego employers for all contributions, liquidated damages, interest, costs, and attorney's fees otherwise due from each of them under the collective bargaining agreement and in accordance with the confession of judgment entered against Handle and any monetary judgment entered herein;
- c. A declaratory judgment finding HCC to be the successor to Handle, and therefore, jointly and severally liable to plaintiffs as a successor employers for all contributions, liquidated damages, interest, costs, and attorney's fees otherwise due from each of them under the collective bargaining agreement and in accordance with the confession of judgment entered against Handle; and
- d. For such other and further relief as this court deems just and equitable.

DATED this 20th day of October, 2011.

s/ Frank J. Morales

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